No. 83-1596

In the Supreme Court of the United States

OCTOBER TERM, 1983

FRANK J. VALENTA, PETITIONER

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO, AND RAYMOND J. DONOVAN, SECRETARY OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENT IN OPPOSITION

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TABLE OF AUTHORITIES

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Petitioner, an incumbent officer and successful candidate in a labor union election, contends that the district court abused its discretion in denying him leave to intervene in an action brought by the Secretary of Labor to set aside the election under Title IV of the Labor-Management Reporting and Disclosure Act of 1959.

1. a. On May 28, 1981, the United Steelworkers of America, AFL-CIO (the union) held an election for the office of Director of District 28. Petitioner, the incumbent Director, was able to run for office unopposed because the union failed to give his opponent credit for nominations received from two of the ten locals necessary for nomination under the union's rules (Pet. 11-12).

The unsuccessful candidate complained of his disqualification to the Secretary of Labor, in accordance with procedures set forth in Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. 481 *et seq.* The Secretary investigated the complaint and found probable cause to believe that violations of Section 401(e) of the Act (29 U.S.C. 481(e)) had occurred during the challenged election.

b. On October 2, 1981, the Secretary brought this action in the United States District Court for the Western District of Pennsylvania under Section 402 of the Act (29 U.S.C. 482). The Secretary sought an order voiding the May 28, 1981 election and directing the union to conduct a new election under supervision of the Secretary.

On July 26, 1982 the district court closed discovery; it then placed the case on its trial list. On November 18, 1982, more than 13 months after the Secretary's complaint was filed, petitioner moved to intervene as a party defendant. On December 20, 1982 the district court denied the motion (Pet. App. 48-51).

The district court first found that "the movant's petition to intervene as a party defendant is barred under Title IV of [the LMRDA] for the reason that the movant does not seek to intervene to advance the claims of the plaintiff-secretary" (Pet. App. 49). In any event, the court held, the motion was "untimely under the standards enunciated in *Commonwealth of Pa.* v. *Rizzo*, 530 F.2d 501, 506 (3rd Cir. 1976)" (Pet. App. 50).

c. The court of appeals affirmed (Pet. App. 41-47; 721 F.2d 126). It noted that it would reverse a decision that intervention was not timely only where there was an abuse of discretion (Pet. App. 45). The court then held that in this case there had been no such abuse (*id.* at 46-47):

> First, appellant did not seek to intervene until more than thirteen months after the complaint had been filed. All of the pretrial work was complete at that time and the case was already scheduled for trial. Second, the court found that substantial prejudice could result to the other parties. We agree. The longer the proceedings are delayed, the longer the challenging candidate remains out of office and the longer the intervenor retains the office. Allowing intervention at this point would contravene Congress's interest in resolving challenges to union elections as quickly as possible. See *Dunlop* v. *Bachowski*, 421 U.S. 560, 569 (1975). Third, the district court found that appellant offered no meaningful justification for his delay. Again, we agree.[1]

Because the court of appeals viewed the issue of untimeliness as dispositive, it found it unnecessary to address such questions as "whether an officer who had been successful in the election is permitted to intervene on the side of the defendant union under 29 U.S.C. Section 482 and whether such officer has a right to intervene under the terms of Rule 24(a)(2), F.R.Civ.P." (Pet. App. 44 n.2).

2. The decision of the court of appeals is correct and consistent with the purposes of the Federal Rules of Civil Procedure and the LMRDA. It does not conflict with the decisions of this Court or of any other court of appeals. Indeed, it involves nothing more than the application of well-settled principles to the facts of this case. Further review is unwarranted.

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[1]Petitioner argued that his delay was justified because he had been awaiting the outcome of a related suit, later dismissed for lack of jurisdiction, and because he had needed time to determine whether his interests were being adequately represented by the union. The court of appeals concluded that "[t]hese arguments resemble evidence of tactical decisions; collectively and individually, they do not excuse the delay for intervention in the case here" (Pet. App. 47).

Fed. R. Civ. P. 24(a) makes it a prerequisite to intervention that the application be "timely."[2] In *NAACP* v. *New York*, 413 U.S. 345, 365-366 (1973) (footnote omitted), this Court noted that:

> [A]lthough the point to which the suit has progressed is one factor in the determination of timeliness, it is not solely dispositive. Timeliness is to be determined from all the circumstances. And it is to be determined by the court in the exercise of its sound discretion; unless that discretion is abused, the court's ruling will not be disturbed on review.

The "circumstances" to which the Court referred include, in addition to the stage the proceedings have reached,[3] such factors as the prejudice that delay might cause to other parties,[4] and the justification for the delay.[5] See generally *Commonwealth of Pennsylvania* v. *Rizzo*, 530 F.2d 501, 506 (3d Cir.), cert. denied, 426 U.S. 921 (1976); *Nevilles* v. *EEOC*, 511 F.2d 303, 305 (8th Cir. 1975).

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[2]Rule 24(a) states:

> *Intervention of Right.* Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

[3]See also *Iowa State University Research Foundation* v. *Honeywell, Inc.*, 459 F.2d 447, 449 (8th Cir. 1972).

[4]See, *e.g.*, *Diaz* v. *Southern Drilling Corp.*, 427 F.2d 1118, 1125 (5th Cir.), cert. denied, 400 U.S. 878 (1970); *Kozak* v. *Wells*, 278 F.2d 104, 109 (8th Cir. 1960).

[5]See, *e.g.*, *Iowa State University Research Foundation* v. *Honeywell, Inc.*, 459 F.2d at 449.

Applying these criteria, the district court found that petitioner's motion came 13 months after suit was filed, would (if granted) be prejudicial to the existing parties, and offered "no justification" for the inordinate delay (Pet. App. 50-51). The court of appeals agreed in all respects.

Petitioner nevertheless argues that his delay was "prudent" (Pet. 33) because his opponent in the election had also sued the union in another action (whose outcome he was awaiting) (Pet. 34), and because "it was also necessary for [him] to sit back and see if the Union would adequately represent his interests" (Pet. 35). These contentions are without merit. The latter claim is one that could be made by any untimely intervenor. Petitioner says nothing that makes his case appear to be unique, other than the suggestion (Pet. 29) that he might have raised several issues the union did not.[6] Petitioner also claims that he was awaiting the outcome of a related lawsuit. But he does not indicate that he was a party to that action,[7] and the suit was in any event not dismissed until *after* petitioner moved to intervene here (Pet. 35).[8]

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[6]We note that the issues petitioner asserts a desire to litigate concern his opponent's failure to exhaust internal union remedies (Pet. 29-31) —a matter that is far more pertinent to the union's interest in self-government than to petitioner's personal stake in his office. See *Labor-Management Reform Legislation: Hearings on S. 505 et al. Before the Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare*, 86th Cong., 1st Sess. 134 (1959) (testimony of Archibald Cox).

[7]His interests were instead represented by the same union whose representation in this action he claims was inadequate. See Pet. 34.

[8]Because the court of appeals found that petitioner's motion to intervene was untimely, it did not reach the question whether the LMRDA bars intervention by a successful candidate as a party defendant on the side of the union. Consideration of that question by this Court would thus be inappropriate, see *Smith* v. *Butler*, 366 U.S. 161 (1961), and would in any event not change the outcome of the case. We note, however, that the district court's ruling is consistent with *Trbovich*

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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MAY 1984

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v. *United Mine Workers*, 404 U.S. 528, 536-537 (1972), and with the only case since *Trbovich* to decide the same issue. *Brennan* v. *Silvergate District Lodge No. 50*, 503 F.2d 800, 806 (9th Cir. 1974).

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